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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-67**

13 **VIRGINIA DUARTE**
14 **2400 Skyline Drive, Apt. I-2**
Pacifica, California 94044
Registered Nurse License No. 365992

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about August 31, 1983, the Board of Registered Nursing issued Registered
23 Nurse License Number 365992 to Virginia Duarte ("Respondent"). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on January 31, 2013, unless renewed.

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8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

9. California Code of Regulations, title 16, section 1443.5 states:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

"(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

"(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

"(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

• • •

"(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

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1 10. California Code of Regulations, title 16, section 1444, states:

2 "A conviction or act shall be considered to be substantially related to the qualifications,
3 functions or duties of a registered nurse if to a substantial degree it evidences the present or
4 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
5 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

6 ...
7 "(c) Theft, dishonesty, fraud, or deceit."
8 ...

9 COST RECOVERY

10 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 FIRST CAUSE FOR DISCIPLINE

15 (Gross Negligence/Incompetence - Failure to Follow Plan of Care - Patient 1)

16 12. Respondent is subject to discipline under Business and Professions Code section
17 2761(a)(1), for gross negligence and/or incompetence, as defined in Title 16, California Code of
18 Regulations sections 1442, 1443 and 1443.5, in that on or about November 28, 2008, while
19 employed as a registered nurse with Crossroads Home Care and Hospice ("Crossroads") in San
20 Francisco, California, she failed to follow the plan of care regarding providing home visits to
21 Patient 1. The circumstances in support of this allegation are as follows:

22 a. On or about November 28, 2008, Respondent was assigned to provide hospice care to
23 Patient 1 who had been diagnosed with terminal lung cancer. The plan of care was that Patient 1
24 was to receive home visits from Respondent two-to-three times a week.

25 b. After being assigned to Patient 1 on or about November 28, 2008, Respondent's first
26 home visit was two weeks later on December 12, 2008.

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1 1444 (c), in that while employed as a registered nurse with Crossroads she falsified nursing
2 documentation regarding the health status and care rendered to Patient 2. The circumstances in
3 support of this allegation are as follows:

4 a. On or about November 30, 2008, Respondent was assigned to provide care for Patient
5 2. Respondent made her initial visit on or about December 5, 2008. After this visit, Respondent
6 failed to provide required home visits to Patient 2 during the month of December 2008.

7 b. Respondent submitted to Crossroads completed skilled nursing visit forms on behalf
8 of the health status and care rendered to Patient 2's for visits allegedly made on December 13 and
9 December 17, 2008. However, Respondent's only visit to Patient 2 was on December 5, 2008.

10 FIFTH CAUSE FOR DISCIPLINE

11 (Gross Negligence/Incompetence - Failure to Follow Plan of Care - Patient 3)

12 16. Respondent is subject to discipline under Business and Professions Code section
13 2761(a)(1), for gross negligence and/or incompetence, as defined in Title 16, California Code of
14 Regulations sections 1442, 1443 and 1443.5, in that on or about February 22, 2009, while
15 employed as a registered nurse with Crossroads, she failed to follow the plan of care regarding
16 providing home visits to Patient 3. The circumstances in support of this allegation are as follows:

17 a. On or about February 22, 2009, Respondent was assigned to provide care for Patient
18 3 who had been diagnosed with metastatic cancer. The plan of care was that Patient 3 was to
19 receive home visits from Respondent two times per week.

20 b. Respondent's last home visit to Patient 3 was on March 3, 2009. Approximately two
21 weeks later, on or about March 17, 2009, Patient 3 expired. Respondent failed to visit Patient 3
22 two times per week as set forth in the plan of care.

23 SIXTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct - Failure to Follow Policy - Patient 3)

25 17. Respondent is subject to discipline under Business and Professions Code section
26 2761(a), for unprofessional conduct in that on or about February 22, 2009, while employed as a
27 registered nurse with Crossroads, she failed to follow the facility's policy regarding advising
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1 Patient 3 and/or his caregivers' as to how to contact Crossroads after hours if they had any
2 questions or concerns. The circumstances in support of this allegation are as follows:

3 a. On or about February 22, 2009, Respondent was assigned to provide hospice care to
4 Patient 3, who had been diagnosed with metastatic cancer. Crossroads policy provided that
5 patients and/or their caregivers were to call the facility after hours, not the assigned registered
6 nurse for any questions or concerns.

7 b. Respondent advised Patient 3's family to contact her by cell phone for any questions
8 or concerns.

9 SEVENTH CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Falsified Documentation - Patient 3)

11 18. Respondent is subject to discipline under Business and Professions Code section
12 2761(a), for unprofessional conduct as defined in Title 16, California Code of Regulations section
13 1444 (c), in that while employed as a registered nurse with Crossroads she falsified nursing
14 documentation regarding the health status and care rendered to Patient 3. The circumstances in
15 support of this allegation are as follows:

16 a. On or about February 22, 2009, Respondent was assigned to provide care for Patient
17 3, who had been diagnosed with metastatic cancer. The plan of care was that Patient 3 was to
18 receive home visits from Respondent at a frequency of two times per week.

19 b. Respondent's last home visit to Patient 3 was on March 3, 2009. However, on
20 March 6, March 9 and March 16, 2009, Respondent submitted to Crossroads completed skilled
21 nursing visit forms on the health status and care rendered to Patient 3.

22 c. Respondent submitted Hospice Interdisciplinary Team ("IDT") Meeting Notes
23 regarding Patient 3's health status dated March 9, March 12, 2009, when her last visit to Patient 3
24 had been on March 3, 2009.

25 d. Respondent submitted Hospice IDT Meeting Notes regarding Patient 3's health status
26 dated March 19, 2009, when Patient 3 had expired on March 17, 2009.

27 EIGHTH CAUSE FOR DISCIPLINE

28 (Gross Negligence/Incompetence - Failure to Follow Plan of Care - Patient 4)

1 19. Respondent is subject to discipline under Business and Professions Code section
2 2761(a)(1), for gross negligence and/or incompetence, as defined in Title 16, California Code of
3 Regulations sections 1442, 1443 and 1443.5, in that on or about February 26, 2009, while
4 employed as a registered nurse with Crossroads, she failed to follow the plan of care regarding
5 providing home visits to Patient 4. The circumstances in support of this allegation are as follows:

6 a. On or about February 26, 2009, Respondent was assigned to provide care for Patient
7 4. On or about March 7, 2009, Patient 4's family and/or caregivers called Crossroads to complain
8 that Respondent had not made any home visits since February 26, 2009. Respondent admitted the
9 allegations.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Registered Nursing issue a decision:

13 1. Revoking or suspending Registered Nurse License Number 365992, issued to
14 Virginia Duarte.

15 2. Ordering Virginia Duarte to pay the Board of Registered Nursing the reasonable costs
16 of the investigation and enforcement of this case, pursuant to Business and Professions Code
17 section 125.3.

18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: July 28, 2011

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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